

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,
ex rel. PATRICK MORRISEY,

Plaintiff,

v.

CIVIL ACTION NO. 14-C-77

MELISSA WEBB, personally and in her capacity as an employee of the Mingo County Board of Education;
DEANNA MAYNARD, personally and in her capacity as an employee of the Mingo County Board of Education;
HESTER KEATLEY, personally and in her capacity as an employee of the Mingo County Board of Education;
MELVIN CUNNINGHAM, personally and in his capacity as an employee of the Mingo County Board of Education;
RANDY KEATHLEY, personally and in his capacity as Superintendent of the Mingo County Board of Education;
MINGO COUNTY BOARD OF EDUCATION,
JUVENILE 1, a minor under the age of eighteen years,
MOTHER and **FATHER** of **JUVENILE 1**, in their capacity as the parents, guardians, and/or custodians of Juvenile 1,
JUVENILE 2, a minor under the age of eighteen years; and
MOTHER and **FATHER** of **JUVENILE 2**, in their capacity as the parents, guardians, and/or custodians of Juvenile 2,

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF
AND OTHER APPROPRIATE REMEDIES**

ADMITTED TO RECORD
2014 MAY - 7 P 4:12
MINGO COUNTY CIRCUIT CLERK

NOW COMES the State of West Virginia, by and through Patrick Morrissey, in his official capacity as the Attorney General of West Virginia and hereby seeks a ***Civil Rights Injunction*** and other appropriate relief.

As set forth herein, multiple juvenile females attending Burch Middle School in Mingo County, West Virginia were allegedly subjected to repeated incidents of Sexual Abuse and/or Sexual Assault by two fellow male students, and then threatened with discipline and/or retaliated against by members of the Burch Middle School administration when each pursued punishment for the offenders. Upon information and belief, the most recent discipline against a female victim occurred during the week of April 21, 2014, following an interview the juvenile victim had with the West Virginia State Police who were attempting to investigate this matter in conjunction with the West Virginia Attorney General's office.

As further set forth herein, the two male students have avoided criminal investigation, prosecution, or meaningful punishment due to the actions and conduct of the administrators and teachers at Birch Middle School and the Mingo County Board of Education. Instead of a meaningful investigation by the school, upon information and belief, the female victims have been disparately treated and punished, while the alleged male perpetrators have been "taken care of".

In light of the continued conduct and actions against the juvenile female victims at Burch Middle School, the State of West Virginia, by and through West Virginia Attorney General Patrick Morrissey, seeks, *inter alia*, injunctive relief enjoining Defendants from interfering with an ongoing criminal investigation and an ongoing

Human Rights Commission investigation. Plaintiff further seeks relief restraining Defendants from further alleged acts of sexual abuse, intimidation and retaliation against juvenile females at Burch Middle School.

In support thereof, Plaintiff further states and alleges as follows:

PARTIES

1. The Plaintiff, State of West Virginia, by and through Attorney General Patrick Morrisey, has statutory authority to seek a Civil Rights Injunction pursuant to West Virginia Code § 5-11-20.

2. Defendant Melissa Webb, upon information and belief, is a resident of Mingo County, West Virginia, and is named individually and in her official capacity as the former Vice Principal and current Principal of Burch Middle School. At all relevant times herein, Defendant Webb was an employee and agent of the Mingo County Board of Education.

3. Defendant Deanna Maynard, upon information and belief, is a resident of Mingo County, West Virginia, and is named individually and in her official capacity as the current Vice-Principal of Burch Middle School. At all relevant times herein, Defendant Maynard was an employee and agent of the Mingo County Board of Education.

4. Defendant Hester Keatley, upon information and belief, is a resident of Mingo County, West Virginia, and is named individually and in her official capacity as a guidance counselor at Burch Middle School. At all relevant times herein, Defendant

Keatley was employee and/or contractor of the Mingo County Board of Education, and at all times served as its agent.

5. Defendant Melvin Cunningham, upon information and belief, is a resident of Mingo County, West Virginia, and is named individually and in his official capacity as teacher and an athletic coach at Burch Middle School. At all relevant times herein, Defendant Cunningham was an employee and agent of Defendant Mingo County Board of Education.

6. Defendant Randy Keathley, upon information and belief, is a resident of Mingo County, West Virginia, and is named in his official capacity as the Superintendent of Mingo County Schools. At all relevant time herein, Defendant Keathley was an employee and agent of the Mingo County Board of Education.

7. Defendant Mingo County Board of Education is a county governmental board with its primary offices located in Williamson, Mingo County, West Virginia.

8. Upon information and belief, Defendant Juvenile 1, is a male minor under the age of eighteen, and currently an Eighth Grade student at Burch Middle School.¹

9. Upon information and belief, Defendant Juvenile 1 is the relative of an employee of the Mingo County Board of Education.

10. Defendants Mother and Father of Juvenile 1, upon information and belief, are residents of Mingo County, West Virginia and are named herein in their capacity as the parents, guardians, and/or custodians of Juvenile 1, a minor under the age of

¹ Given the nature of the allegations and in order to protect the identity of juveniles, the Complaint uses generic pseudonyms (e.g. "Juvenile 1" and "Female Victim 1"). The true names of all individuals are being made known under seal to the Court.

eighteen years.

11. Upon information and belief, Defendant Juvenile 2, is a male minor under the age of eighteen, and was a Seventh Grade student at Burch Middle School during the 2012-2013 school year.

12. Defendants Mother and Father of Juvenile 2, upon information and belief, are residents of Mingo County, West Virginia and are named herein in their capacity as the parents, guardians, and/or custodians of Juvenile 2, a minor under the age of eighteen years.

13. Upon information and belief, Defendant Juvenile 2 is a relative of an employee of the Mingo County Board of Education who actively participated in the purported "investigation" described herein.

JURISDICTION AND VENUE

14. The incidents complained of herein occurred primarily in Mingo County, West Virginia.

15. The requirements of both subject matter jurisdiction and venue are satisfied under the provisions of West Virginia Code §§ 5-11-20(b)(3) and 56-1-1.

I. **ALLEGED SEXUAL ABUSE OF JUVENILE FEMALES** **AT BURCH MIDDLE SCHOOL**

16. Burch Middle School is a public school located in Delbarton, West Virginia that is operated under the control and authority of the Mingo County Board of

Education.

17. Burch Middle School is an intermediary school between elementary and high school that teaches children in Grades Five through Eight, and whose average student population ranges in age from nine (9) years old to fourteen (14) years old.

18. Primarily at issue in this Complaint are alleged violations of law and conduct that occurred during the 2012-2013 school year and have continued to present.

19. During the 2012-2013 school year, the principal at Burch Middle was Jada Hunter and the Vice-Principal was Melissa Webb. Also, during this time, Melvin Cunningham was a teacher and coach at the school and Hester Keatley was a substitute guidance counselor at the school.

20. Upon information and belief, during the spring semester of the 2012-2013 school year, Hester Keatley became aware that several juvenile females at Burch Middle had been subjected to unwanted sexual abuse by fellow students.

21. Upon inquiry by Ms. Keatley, the juvenile female victims relayed similar allegations of sexual abuse that included non-consensual fondling, groping and molestation, oftentimes forcible in nature.

22. Upon information and belief, all of the female victims identified the same two perpetrators of the alleged sexual abuse who often acted in concert with one another.

23. The first alleged perpetrator, hereinafter identified as "Juvenile 1" was a Seventh Grade boy, and whose relative, at all relevant times, is an employee of the Mingo County school system.

24. The second alleged perpetrator, hereinafter identified as "Juvenile 2" was also a Seventh Grade boy, and whose relative, at all relevant times, is an employee of the Mingo County school system.

25. Upon information and belief, Hester Keatley was made aware by several of the female victims that Juvenile 1 and Juvenile 2 would engage in the sexual abuse on school grounds and on school buses.

26. Upon information and belief, Hester Keatley inquired of the pervasiveness of the alleged conduct and potential victims, and was made aware that there existed several other potential female victims in the 2012-2013 Seventh Grade class that had not come forward.

27. Upon information and belief, one of the purported victims identified to Ms. Keatley was a Seventh Grade juvenile female aged thirteen (13), hereinafter identified as "Female Victim 1".

28. While Female Victim 1 did not initially come forward to Ms. Keatley, she subsequently revealed the alleged sexual abuse by Juvenile 1 and Juvenile 2.

29. In addition, at least one other female student, hereinafter identified as "Female Victim 2", revealed to Defendant Keatley alleged sexual abuse by Juvenile 1 and Juvenile 2.

30. While additional victims exist, the conduct against Female Victim 1 and Female Victim 2 reflects the necessity for the relief sought herein.

A.

Alleged Abuse of Female Victim 1

31. Between November 2012, and May 10, 2013, Female Victim 1 was a thirteen year-old Seventh Grade female student lawfully and peacefully attending school at Burch Middle School and utilizing school buses operated by the Mingo County Board of Education.

32. During the above-stated time period, the Parents of Female Victim 1 noticed a change in their daughter's demeanor in that she was becoming withdrawn, anxious, and suffered from crying spells. When asked what was wrong, she would reply "nobody understands," or "it doesn't matter."

33. On multiple occasions throughout the above-stated time period, it is alleged that Defendants Juvenile 1 and Juvenile 2 forcibly subjected Female Victim 1 to contacts of a sexual nature by physically grabbing and restraining her while groping her breasts, genitalia and/or buttocks in violation of West Virginia Code §61-8B-7.

34. One of the alleged attacks on Female Victim 1 occurred on a school bus operated by the Mingo County Board of Education in which Defendant Juvenile 1 conspired with Defendant Juvenile 2 to trap her in a bus seat, and subject her to the unwanted and illegal sexual abuse.

35. During the course of another attack, Female Victim 1 threatened to report the abuse to the school administrators. Defendant Juvenile 1 purportedly said to Juvenile Defendant 2, "Don't worry, [your relative] will take care of us."

36. Due to intimidation, fear, and embarrassment, Female Victim 1 did not voluntarily report any of the numerous alleged attacks to either her parents or school administrators.

37. Upon information and belief, two other female students who were being subjected to similar acts of unwanted and unlawful sexual abuse by Juvenile 1 and Juvenile 2 informed Guidance Counselor Keatley that Female Victim 1 was likewise being subjected to similar abuse.

38. Upon information and belief, in May 2013, Defendant Hester Keatley questioned Female Victim 1 about the alleged abuse. It was during this inquiry that Female Victim 1 acknowledged the abuse and recounted some of the attacks, including the attack on the school bus.

39. Thereafter, on or about May 10, 2013, Female Victim 1 was told that the school principal, Jada Hunter, had been informed of the allegations and would be calling her parents.

40. In light of the potential phone call, Female Victim 1 briefly disclosed to her mother that she had given a statement about something that had occurred to her over the course of that school year and that she (Female Victim 1's Mother) should expect a call from Principal Hunter.

41. Upon information and belief, Female Victim 1 did not disclose to her mother the nature of the abuse against her or the details of the statements given to guidance counselor Keatley.

42. On or about May 13, 2013, Female Victim 1's mother was told that Ms. Hunter would meet that day with Defendants Juvenile 1 and Juvenile 2 and call back to report to Female Victim 1's Mother the outcome of those meetings. However, Female Victim 1's Mother was not called by Principal Hunter.

43. On May 15, 2013, Female Victim 1 finally confided in her mother and told her mother a portion of the nature, duration, and severity of the attacks she had suffered from Juvenile Defendant 1 and Juvenile Defendant 2.

44. Despite her promise on May 13, Principal Hunter then failed or refused to call Female Victim 1's Mother, and further failed or refused to return multiple phone calls from Female Victim 1's Mother on May 14, 15, 16, and 17, 2013.

45. Finally, on or about May 17, 2013, after repeated calls to the school by Female Victim 1's parents, Vice Principal Webb gave Female Victim 1's mother two cell phone numbers for contacting Principal Hunter.

46. At approximately 6:00 p.m. on May 17, 2013, Principal Hunter called Female Victim 1's mother but refused to inform her of the full extent of the attacks upon her daughter. Instead, Principal Hunter said that something had happened and not to worry because she (Hunter) had taken care of it. Female Victim 1's mother then inquired if Hunter was aware of the reported bus incident. Principal Hunter denied having received a report about that particular incident.

B.

Meeting with Principal Hunter

47. Not satisfied with Principal Hunter's statement of resolution, on May 21,

2013, Female Victim 1's mother called Ms. Hunter and demanded a meeting with the parents of Defendants Juvenile 1 and Juvenile 2.

48. On May 23, 2013, Female Victim 1's Parents met with Principal Hunter, Father of Juvenile 1, and Father of Juvenile 2. Defendant Melvin Cunningham, a teacher and coach at the school, was present at this meeting.

49. At this meeting, Defendant Father of Juvenile 2 informed all present that Juvenile 2 had admitted the abuse allegations, and apologized for his son's actions. He further informed Female Victim 1's parents that his son only did it because of peer pressure from Juvenile 1.

50. Notwithstanding the admission and statement of Juvenile 2's Father in the presence of Mr. Cunningham, Defendant Cunningham announced that since there were no witnesses, Female Victim 1 could not prove a thing.

51. Upon information and belief, Defendant Melvin Cunningham then threatened disciplinary action against Female Victim 1 should she continue to complain without witnesses.

52. Principal Hunter then additionally informed Female Victim 1's parents that Defendant Melvin Cunningham was correct, there were no witnesses, and without witnesses there was nothing more that she (Principal Hunter on behalf of the Mingo County Board of Education) could do. She also stated that Female Victim 1 could be disciplined for reporting the attacks.

53. Principal Hunter never explained the necessity for witnesses even though she was present for the admission and statement of Juvenile 2's Father.

54. Principal Hunter did, however, tell Female Victim 1's Parents that she (Principal Hunter) knew what had happened, and if Female Victim 1's Parents would trust her and not call law enforcement, she would "take care of it."

55. Female Victim 1's Parents were left with the impression, or otherwise assumed, that by taking care of it, Principal Hunter would call law enforcement. It was not until March 2014, when they received the redacted copy of the investigation file, that Female Victim 1's Parents were made aware that law enforcement had not been called.

C.

Alleged Abuse of Female Victim 2

56. Between November 2012, and May 10, 2013, Female Victim 2 was a thirteen year old Seventh Grade female student lawfully and peacefully attending school at Burch Middle School and utilizing school buses operated by the Mingo County Board of Education.

57. During the above-stated time period, the Parents of Female Victim 2 noticed a change in their daughter's performance and grades in school.

58. On multiple occasions throughout the above-stated time period, it is alleged that Defendants Juvenile 1 and Juvenile 2 forcibly subjected Female Victim 2 to contacts of a sexual nature by physically grabbing and restraining her while groping her breasts, genitalia and/or buttocks in violation of West Virginia Code §61-8B-7.

59. Many of the alleged attacks on Female Victim 2 occurred in the school's computer lab where she was assigned a seat near Defendants Juvenile 1 and Juvenile

2.

60. During some of these alleged attacks, Defendants Juvenile 1 and Juvenile 2 worked in concert so that one of the Juvenile Defendants would restrain Female Victim 2 while the other Juvenile Defendant would grope and sexually intrude upon Female Victim 2. Some of the intrusion and groping was above the clothing and some of the intrusion and groping was underneath the clothing of Female Victim 2.

61. While most of the sexual abuse occurred at Burch Middle School, another alleged attack of Female Victim 2 occurred on a school field trip to Charleston, West Virginia.

62. During this field trip, Defendant Juvenile 1 allegedly forcibly penetrated Female Victim 2 in violation of West Virginia Code § 61-8B- 4 ("Sexual Assault in the Second Degree").

II.

FAILURE TO REPORT SEXUAL ABUSE OR TO MEANINGFULLY INVESTIGATE/DISCIPLINE THE CONDUCT

63. Upon disclosure of the alleged sexual abuse by two juvenile boys, the administrators at Burch Middle School and/or at the Mingo County Board of Education failed to take reasonably expected action or investigation into this alleged abuse.

64. Instead, every action taken by Defendants was either to minimize the allegations against the boys and/or to protect the alleged male juvenile perpetrators.

A.
FAILURE TO REPORT

65. Defendants Melissa Webb, Hester Keatley, Deanna Maynard, and Melvin Cunningham are each “custodians” (and serve in a position *in loco parentis*) with respect to each of the juvenile female victims.

66. Policy 8462 of the Mingo County Schools Bylaws and Policies mandates a report to law enforcement within 48 hours of a disclosure of any sexual abuse or sexual assault upon a child.

67. In particular, Policy 8462 imposes the following upon employees of Burch Middle School:

Any person over the age of eighteen (18) who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight (48) hours after receiving such a disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report.

* * *

Nothing herein shall preclude the person first suspecting abuse or neglect from notifying the appropriate agencies on their own behalf, in addition to following the reporting requirements contained herein.

68. Upon information and belief, Defendants Webb, Keatley and Cunningham failed to contact law enforcement to the report the alleged abuse that had been disclosed to them.

69. Upon information and belief, other employees and agents of the Mingo County Board of Education, including former Principal Jada Hunter and Superintendent

Keathley, were informed of the alleged unwanted and unlawful sexual abuse by Defendant Juvenile 1 and Defendant Juvenile 2.

70. Upon further information and belief, these other employees and agents of the Mingo County Board of Education also failed to report the alleged abuse in violation of policy.

**B.
LACK OF MEANINGFUL INVESTIGATION OR PUNISHMENT
OF SEXUAL ABUSE**

71. Upon information and belief, the administrators at Burch Middle School and/or the Mingo County Board of Education failed to adequately or reasonable investigate the allegations raised by the multiple juvenile female victims. Despite admissions by the Father of Juvenile 2, the “investigation” undertaken by Defendants was ineffective, non-existent, and/or designed to illicit contradictory and/or less incriminating statements from the female victims.

72. An example of this intent to derive less incriminating statements to protect the male perpetrators is evidenced by the Defendants handling of Female Victim 1’s disclosure of the sexual abuse.

73. Following her disclosure to guidance counselor Hester Keatley, Defendant Keatley directed Female Victim 1 to provide a written statement as to what had happened to her during the school bus attack.

74. Female Victim 1 complied with the request and provided a written statement detailing the attack. In the statement, she named both Juvenile 1 and

Juvenile 2 as responsible for the sexual abuse.

75. On May 20, 2013, Defendant Keatley directed Female Victim 1 to write new, additional statements about the same incident on the bus. This time, however, Defendant Keatley directed Female Victim 1 to write one statement about Juvenile Defendant 1, and a separate statement about Juvenile Defendant 2.

76. Upon information and belief, the initial statement and the second statement regarding Juvenile 1 are no longer in existence and/or not part of the investigation file that was subsequently produced.

77. The absence of this missing statement against Juvenile 1 became significant during the meeting of the parents on May 23, 2013.

78. During the meeting, Defendant Father of Juvenile 1 indicated that he knew that Female Victim 1 had not given a statement against Juvenile 1.

79. Instead, Defendant Father of Juvenile 1 referenced only the new separate statement given about Juvenile 2, whose Father, upon information and belief, was not aware of the other statement implicating his son (Juvenile 2).

80. The availability of the statement against Juvenile 2 to the Father of Juvenile 1 raises further concerns. Aside from potential confidentiality issues, the Defendants still have yet to provide copies of Female Victim 1's written statements nor divulge the content of the statements to her parents.

81. Aside from the multiple written statement requests of Female Victim 1, the overall handling of the allegations was inherently flawed and tainted with conflicts of interest.

82. Specifically, a relative of Juvenile 2 was directly involved in the handling and investigation into the allegations against Defendant Juvenile 2, and involved in decisions relating to the disciplining/punishment of the male juvenile offenders.

83. Upon information and belief, Defendants Melissa Webb and/or Principal Jada Hunter “disciplined” Defendants Juvenile 1 and Juvenile 2 for the alleged unwanted and illegal sexual abuse of a female student by denying them a break for ice cream during the WESTEST, a one day out of school suspension, and a one day in school suspension.

III.

RETALIATION AND INTIMIDATION

84. In addition to the lack of mandatory reporting and improper handling of the allegations, Defendants, upon information and belief, further engaged in a course of conduct to frustrate and/or intimidate any potential investigation or lawsuit into the alleged abuse.

85. Upon information and belief, this course of conduct included direct retaliation and/or manufactured allegations/discipline of female victims to preemptively create false credibility attacks.

86. Upon information and belief, this course of conduct also included delay by the Mingo County Board of Education to frustrate any potential future legal action or inquiry by parents of the female victims.

A.
Retaliation Against Female Victim 2 Within 24 Hours of
Statement to West Virginia State Police

87. Following notification to the West Virginia State Police from the Office of the West Virginia Attorney General, the State Police opened an investigation.

88. On Monday, April 23, 2014, a West Virginia State Trooper arrived at Burch Middle School and requested the opportunity to take a statement from Female Victim 2 and another juvenile female.

89. He was informed by Defendant Webb (Principal at Burch Middle) that the third juvenile female was absent from school that day, but that he could only speak with Female Victim 2 so long as her parents consented.

90. Defendant Webb then left the room. Upon her return, she stated that she called Female Victim 2's house but there was no answer.

91. The Trooper then left the school, drove to Female Victim 2's home where he found the mother of Female Victim 2 without any difficulty.

92. The mother of Female Victim 2 called Burch Middle School and gave her permission for Female Victim 2 to speak with law enforcement.

93. Female Victim 2 then gave the investigating Trooper a statement while at Burch Middle School relating to the abuse by Juvenile 1 and Juvenile 2.

94. On Tuesday, April 24, 2014, the day after Female Victim 2 spoke with the State Police, the school administrators at Burch Middle School wrote up Female Victim 2 with the student infraction of "bullying".

95. Upon information and belief, the “bullying” charge was based upon Female Victim 2’s actions in allegedly blocking her Facebook account from the niece of a teacher at the school.

96. Then, on Wednesday, April 25, 2014, the school administrators at Burch Middle School wrote up Female Victim 2 with an additional student infraction.

97. This second write-up in as many days was for alleged “insubordination” for which she now faces additional discipline.

**B.
Further Retaliation Against Female Victim 1
(Transfer to Lower Grade)**

98. During the current 2013-2014 school year, Female Victim 1 (now an Eighth Grade student at Burch Middle School) had Art during seventh period and Physical Education (P.E.) during eighth period. This schedule is flipped for Seventh Grade students, such that seventh graders have P.E. during their seventh period and Art during the eighth period.

99. On the first day of this semester (began in January 2014), Juvenile Defendant 1 (also now in Eighth Grade) and Female Victim 1 apparently were scheduled together in the same P.E./ART classes.

100. Upon information and belief, Juvenile 1 came into class, saw Female Victim 1 in his class, and immediately left for the school office not to return.

101. Thereafter, school administrators pulled Female Victim 1 from her Eighth Grade P.E. and Art class and changed her schedule so that she now attends P.E. and

Art with the Seventh Graders.

102. Juvenile Defendant 1 stayed in the original, grade-appropriate class.

103. Hence, rather than remove male Juvenile 1 from Female Victim 1's classes, Defendant Melissa Webb and others employed by Defendant Mingo County Board of Education retaliated against Female Victim 1 by removing Female Victim 1 from her classes and placing her into other classes which were below her academic grade level, thus taking adverse action against Female Victim 1.

104. Female Victim 1 continues to be adversely affected by Defendants and still must attend classes with the lower academic grade students, while the alleged juvenile male perpetrator remains unaffected and in the grade appropriate classes.

C.

Alleged Preemptive Character Attack of Female Victim 1 (False Claim of Student Infraction for Deceit)

105. In November 2013, within weeks after the last attempt by Female Victim 1's parents to obtain a copy of their daughter's investigation file, Burch Middle School officials charged Female Victim 1 with engaging in deceitful conduct and disciplined her.

106. Specifically, Vice Principal Deanna Maynard maintained that Female Victim 1 had sent an offensive note to another female student and lied about it, thereby engaging in deceit.

107. Upon information and belief, the actual facts of the alleged incident did not justify the imposed charge or discipline.

108. Rather, upon information and belief, the actual conduct was as follows:

(a) Female Victim 1 sends a handwritten note to her friend in class;

(b) Female Victim 1 is subsequently confronted by Defendant Maynard and asked if she had sent the student a note;

(c) Female Victim 1 responds in the affirmative that she had sent a note;

(d) Defendant Maynard then began asserting that the note was a form of bullying, and threatened Female Victim 1 with expulsion;²

(e) Defendant Maynard indicated that the purported “bullying” note was left in a locker;

(f) Female Victim 1 realizes they were obviously talking about two separate notes, and informs Defendant Maynard that she did not write the “bullying” note Defendant Maynard was referencing; and

(g) Defendant Maynard then accuses Female Victim 1 of changing her “confession”.

109. As a result of the alleged recantation of the “confession,” Defendant Maynard brought student disciplinary charges against Female Victim 1 for “Deceit.”

110. Defendant Maynard alleged Female Victim 1’s initial answer had “slowed the investigation” into the author of the offending note in the locker. However, school administrators have allegedly admitted to the parents that the delay was mere minutes.

111. As a result of this trumped-up infraction, Female Victim 1 was formally disciplined by administrators at Burch Middle School, and has been subjected to

² Female Victim 1 was never shown the note before or after she was accused of bullying. Female Victim 1 also has a distinctive handwriting style which would likely permit a visual inspection to determine if it was indeed her handwriting. Upon information and belief, Defendant Maynard, and/or Burch Middle School, has failed and/or refused to allow Female Victim 1 or her parents to see the purported offending note.

multiple levels of punishment, including being forced to meet with school administrators on four separate occasions.

**D.
Further Obstruction of Law Enforcement Investigation**

112. On Monday, April 23, 2014, the investigating Trooper spoke with the mother of another alleged female victim and asked if he could take a statement.

113. The mother of this alleged third victim consented to the statement and stated her intent to be present at the time of her daughter's statement. However, she wanted the Trooper to take the statement the following day at Burch Middle School as her daughter was sick at the time of the request, but would be back in school the following day.

114. On Tuesday, April 24, 2014, the investigating Trooper returned to Burch Middle School in order to take a statement from this third juvenile female with her mother's permission and in her mother's presence.

115. At that time, Defendant Webb and other employees/agents of Mingo County Schools refused to allow the Trooper to take the statement.

116. Defendant Webb went an additional step further, and informed the State Trooper investigating the alleged sexual abuse at the school that he could no longer take statements from students at Burch Middle School because it "disrupted the learning environment."

E.
Delay/Inaction by the County Board of Education

117. Following Female Victim 1 parents' May 13, 2013, meeting with then-Principal Jada Hunter and fathers of Juvenile1 Juvenile 2, Female Victim 1's parents engaged the services of an attorney for the sole purpose of obtaining a copy of the "investigation" file including their daughter's statements.

118. On May 29, 2013, Female Victim 1's parents, through an attorney, requested in writing a copy of the materials collected in the "investigation" into these allegations. Defendant Mingo County Board of Education did not produce a copy.

119. On June 7, 2013, Female Victim 1's parents, through an attorney, sent a second letter requesting a copy of the materials collected in the "investigation" into these allegations. Defendant Mingo County Board of Education did not produce a copy.

120. On September 30, 2013, Female Victim 1's parents, through an attorney, sent a third letter requesting a copy of the materials collected in the "investigation" into these allegations. Defendant Mingo County Board of Education did not produce a copy.

121. On or after October 3, 2013, Defendant Melissa Webb, who replaced Jada Hunter as principal at Burch Middle School beginning in the 2013-2014 school year, made and signed an entry into written notes she was maintaining regarding her contacts with Female Victim 1's mother. In it she wrote:

October 1, 2013

I received a letter from [Female Victim 1 Parents' attorney] addressed to Jada Hunter requesting written statements from Mrs. Keatley and Ms. Hunter. They also requested to know the discipline that was enforced on the two students. It

was at the end of the day when I received the letter so I called Mr. Bobbera and Mr. Damron and left them a message.

October 2, 2013

I called [Female Victim 1's mother] because I was under the impression that everything was resolved. I told her that I received a letter from her attorney requesting certain documentation. She said that she did not know about the letter until she received her letter in the mailbox from her attorney. She said to go ahead and follow through with the request just to make sure that every I was dotted and T was crossed for the other party. I told her I would give the letter to Ms. Hunter and the board was aware of the request as well.

122. By letter dated October 8, 2013, an attorney for Defendant Mingo County Board of Education replied to the third letter and stated she would provide Female Victim 1 Parents' with non-protected documents. The attorney continued, "I have been given some documents but will have to go to the school to look for others as the file does not appear complete to me."

123. Having still not received the requested investigation file relating to her daughter, Female Victim 1's mother advised by letter dated December 11, 2013, Mr. Randy Keathley (Superintendent of Mingo County Schools) and/or Mr. Robert Bobbera (Assistant Superintendent), among others, of the actions and conduct Female Victim 1 had suffered in response to the charge of deceit levied against her daughter.

124. Despite months of requests, Female Victim 1's parents finally received a partial, redacted portion of the investigation file from the Mingo County Board of Education on or about March 14, 2014.

125. Upon information and belief, the investigative file included specific reference to allegations of sexual misconduct of multiple female students by two male students.

126. Yet, despite the express allegations of sexual misconduct and possession of the investigation file for multiple months, the Mingo County Board of Education, upon information and belief, failed to notify law enforcement of the allegations, and to date, still has yet to make a formal referral for investigation by law enforcement.

IV.

NECESSITY AND BASIS FOR INJUNCTIVE RELIEF

127. The juvenile female victims are entitled as a matter of law to obtain an education at a public school free of unwanted sexual abuse and harassment, and to not have their education suffered, deprived, denied, and/or interfered with for the benefit of the juvenile Defendants. See e.g. W.Va. Code § 5-11-9.

128. The Defendants intentionally disregarded and violated school policies intended to protect the juvenile female victims at Burch Middle School.

129. In particular, Defendants allowed and concealed sexual violence and sexual harassment at Burch Middle School in direct contravention of school policy and the West Virginia Human Rights Act (W.Va. Code § 5-11-1 *et seq.*).

130. Policy 5517 of the Mingo County Schools Bylaws and Policies forbids sexual violence, and defines it in relevant part:

D. Sexual Violence – Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another person's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

1. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
2. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
3. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
4. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
5. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

131. Policy 5517 further forbids sexual harassment consisting of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature. The prohibition specifically includes the following:

2. pressure for sexual activity;
3. inappropriate or unwelcome sexually motivated patting, pinching, or physical conduct;
4. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
5. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
6. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
7. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;

132. Policy 5517 also expressly states that sexual violence or harassment constitutes discrimination in violation of the West Virginia Human Rights Act (W.Va. Code § 5-11-1 *et seq.*), and mandates that the Board of Education “will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.”

133. Each of the Defendants failed to adhere to the policies prohibiting sexual violence and harassments; and generally failed to protect female students entrusted to their care. The Defendants conduct constitutes discrimination in violation of, *inter alia*, the West Virginia Human Rights Act and warrants immediate cessation and intervention.

134. Further, the juvenile female victims were disparately treated by the Defendants, while the male perpetrators were protected at the direct expense of the female victims.

135. The Defendants’ adverse course of conduct against the female victims occurred within such a close proximity in time to the protected activities that an unlawful inference of retaliatory motive exists.

136. West Virginia Code § 5-11-20(b) provides a cause of action for the Attorney General to seek an injunction against any person who intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, or by threat by physical force or violence, or attempts to so interfere, with the exercise or enjoyment by any other person of those rights secured by the West Virginia Human

Rights Act.

137. The alleged forcible sexual abuse, threatened and imposed discipline, acts of retaliation and intimidation, delay by the County Board of Education, and lack of equal protection under the law were motivated by the gender/ sex of the female victims and necessitates injunctive relief.

138. Defendants Melissa Webb, Deanna Maynard, Hester Keatley, Melvin Cunningham and Randy Keathley have each engaged in discriminatory conduct in violation of law, and should be enjoined from such further conduct.

139. Further, Defendants Melissa Webb, Deanna Maynard, Hester Keatley, Melvin Cunningham and Randy Keathley are agents, representatives and/or employees acting within the scope of their agency or employment by Defendant Mingo County Board of Education. Accordingly, under a theory of agency and/or employment, Defendant Mingo County Board of Education is and should be subject to any injunction which issues herein.

140. Finally, the public policy and express statutory intent of the West Virginia Human Rights Act is to provide all citizens with equal access to places of public accommodation, including public schools, and the denial of these rights by reason of sex is contrary to the principles of freedom and equality of opportunity. W.Va. Code § 5-11-2.

141. Through this injunction, the West Virginia Attorney General's Office seeks to restore the ability of children to attend public school and receive a proper education without fear of sexual abuse or harassment; and without retaliation and intimidation from

those teachers and administrators who are under a duty to protect students in their care.

**V.
Incorporation of Sealed Documents**

142. To be filed under seal herewith are affidavits of Female Victim 1 and Female Victim 2, together with affidavits from their respective parents, which attest to the accuracy and validity of the allegations contained herein. **(Filed respectively as Attachments B to G)** Additionally, undersigned counsel intends to file a sealed pleading with the Court identifying each of the parties named herein by pseudonym. **(Filed as Attachment A)**. Such affidavits and filing are necessary to protect the privacy rights of all juveniles which are parties to this matter. It is anticipated the affidavits and pleading will be filed upon entry of a Court Order sealing such filings to protect said privacy interests.

143. These Attachments, upon entry and sealing, are incorporated by reference and shall be considered as part of this pleading.

**VI.
RELIEF REQUESTED**

Plaintiff respectfully requests this Court ORDER the following relief:

1. Enter a Preliminary Injunction and a Permanent Injunction enjoining each Defendant from:

a. assaulting, using physical force or violence, threatening to use

physical force or violence, intimidating, coercing or harassing, or attempting to assault, use physical force or violence, threaten to use physical force or violence, intimidate, coerce or harass Female Victims 1, 2, or any other person motivated by bias based upon race, color, religion, sex, ancestry, national origin, political affiliation, or disability;

b. assaulting, using physical force or violence, threatening to use physical force or violence or attempting to use physical force or violence on any person motivated by bias based upon race, color, religion, sex, ancestry, national origin, political affiliation, or disability;

c. causing or attempting to cause damage to or trespass upon the property of Female Victims 1, 2, or any other person motivated by bias based on race, color, religion, sex, ancestry, national origin, political affiliation, or disability;

d. assaulting, using physical force or violence, threatening to use physical force or violence, intimidating, coercing or harassing, or attempting to assault, threaten, intimidate, coerce or harass any person or causing or attempting to cause damage to or trespass upon the property of any person because he and/or she did or might complain of or testify about acts alleged in this Complaint or acts prohibited by West Virginia or Federal law, or did or might cooperate in any investigation concerning such acts;

e. speaking to, telephoning, writing or otherwise communicating with Female Victims 1, Female Victim 2, any of their family members, or any other juvenile female victim and parents, except through attorneys in order to prepare for Defendants' defense in any criminal prosecution or legal proceeding;

f. unlawfully contacting Female Victims 1 or 2; their parents, and other known juvenile female victims; and

g. encouraging or causing any other person to engage in conduct prohibited in paragraphs (a)-(f) above, or assisting any person in engaging in such conduct.

2. Declare that each of the Defendants have violated the West Virginia Human Rights Act, W. Va. Code § 5-11-1 *et seq.*

3. Order that Female Victim 1 be returned to her previously scheduled classes and further that the Board of Education ameliorate the severe or pervasive conduct by removing those responsible for the attacks on the Female Victims 1 and 2, from Burch Middle School, notably Juvenile 1 and Juvenile 2.

4. Order that Defendants Webb, Maynard, Keatley, and Cunningham be prevented from further oversight, involvement, education, or contact with Female Victim 1, Female Victim 2, and other known juvenile female victims.

5. Order that the discipline charges and other adverse action taken against Female Victim 1 and Female Victim 2, including but not limited to charges of deceit, bullying and insubordination, be vacated, dismissed, and permanently deleted from their student records.

6. Order that the Mingo County Board of Education fully and completely cooperate with the West Virginia State Police who, upon information and belief, are presently investigating the incidents of sexual abuse against Female Victims 1, 2, and other female victims.

7. Order the Defendants, jointly and severally, to pay the reasonable attorney's fees and costs herein under the theory of diversion of resources.

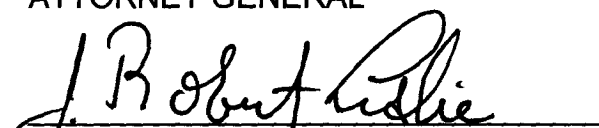
8. Grant other such relief as is just and proper.

RESPECTFULLY SUBMITTED,

**STATE OF WEST VIRGINIA,
ex rel. PATRICK MORRISEY,
ATTORNEY GENERAL**

By Counsel:

PATRICK MORRISEY
ATTORNEY GENERAL


J. ROBERT LESLIE
DEPUTY ATTORNEY GENERAL

CIVIL RIGHTS DIVISION
208 Capitol Street, 3rd Floor
Post Office Box 1789
Charleston, West Virginia 25326-1789
(304) 558-0546
WV State Bar ID No. 6341